UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

HENRY L. WILLIAMS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CAUSE NO. 1:03-CV-348**
	)	
CSX TRANSPORTATION, INC.,	)	
	)	
Defendant.	)	

MEMORANDUM OF DECISION AND ORDER

I. INTRODUCTION

Before the Court is the motion of Defendant CSX Transportation, Inc. ("CSX") for leave to file an amended Answer to Plaintiff Henry L. Williams's ("Williams") Complaint. After considering the motion and the relevant law, the Court finds that the motion should be GRANTED.

II. PROCEDURAL BACKGROUND

Williams filed his Complaint on September 15, 2003; he alleges that he developed carpal tunnel syndrome from performing his duties as a CSX employee, and that CSX is therefore liable under the Federal Employers Liability Act ("FELA"), 45 U.S.C. § 51 *et seq*. (*See* Compl.) This Court conducted a preliminary pretrial conference on November 5, 2003, where it set a December 15, 2003, deadline for amendment of the pleadings. (Docket # 14.) CSX filed an Answer on November 14, 2003. (Docket # 16.) Neither party amended their pleadings before the December 15, 2003, deadline.

III. STANDARD OF REVIEW

A party may amend its pleading once as a matter of course at any time before a responsive pleading is served; otherwise, it may amend only by leave of the court or by written consent of the adverse party. Fed. R. Civ. P. 15(a). Leave to amend is freely given when justice so requires. *Id.* However, this right is not absolute, *Brunt v. Serv. Employees Int'l Union*, 284 F.3d 715, 720 (7th Cir. 2002), and can be denied for undue delay, bad faith, dilatory motive, prejudice, or futility, *Ind. Funeral Dir. Ins. Trust v. Trustmark Ins. Corp.*, 347 F.3d 652, 655 (7th Cir. 2003).

Moreover, the requirements of Rule 15 must be read in conjunction with the requirements of Rule 16, because "[o]nce the district court [has] filed a pretrial scheduling order pursuant to [Rule] 16 which establish[es] a time table for amending pleadings that rule's standards [control]." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992); *Kortum v. Raffles Holdings, Ltd.*, 2002 WL 31455994, *3 (N.D. Ill. Oct. 30, 2002); *Tschantz v. McCann*, 160 F.R.D. 568, 570-71 (N.D. Ind. 1995). Rule 16 provides in part:

> (b) [The district court] . . . shall, after receiving the report from the parties under Rule 26(f)[,] . . . enter a scheduling order that limits the time (1) to join other parties and to amend the pleadings; (2) to file and hear motions; and (3) to complete discovery . . . . A schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by the Local Rule, by a magistrate judge.

Fed. R. Civ. P. 16(b). Thus, a party seeking to amend a pleading after the date specified in a scheduling order must first show "good cause" for the amendment under Rule 16(b); then, if good cause is shown, the party must demonstrate that the amendment is proper under Rule 15. *Tschantz*, 160 F.R.D. at 571. "A court's evaluation of good cause is not co-extensive with an inquiry into the propriety of the amendment under . . . Rule 15." *Id.* (quoting *Johnson*, 975 F.2d

at 609). Rather, the good cause standard focuses on the diligence of the party seeking the amendment. *Id*. In other words, to demonstrate good cause, a party must show that despite its diligence, the time table could not reasonably have been met. *Id.*

IV. DISCUSSION

CSX wishes to amend its Answer to add the affirmative defense that Williams's suit is barred by the statute of limitations. Since the deadline for amendment has passed, CSX must first show good cause for extension of the deadline under Rule 16 and then show that the amendment is proper under Rule 15. As detailed below, CSX succeeds on both counts.

Good cause exists because the new defense CSX wishes to assert is based on recently discovered evidence. CSX served a request for production on October 24, 2003, seeking Williams's medical records for the ten years prior to the events alleged in the Complaint. (Reply at 2.) Pursuant to Fed. R. Civ. P. 34(b), Williams's response was due November 26, 2003, well before the deadline for amendment of pleadings. However, Williams did not provide all of his medical records until June 16, 2004, nearly eight months after they were due and well after the deadline for amendments. (Reply at 3.) Only then did CSX learn that Williams's first complaints of numbness and pain in his hands and elbows occurred in 1997. (*Id.*) CSX then realized that the FELA's three-year statute of limitations, 45 U.S.C. § 56, might be implicated, as Williams did not file his Complaint until 2003 (Docket # 1). Accordingly, the Court finds that, despite its diligence, CSX could not have added the statute-of-limitations defense before the deadline for amendment, due to its recent discovery of new evidence. *See Michalik v. Huron and Eastern R.R. Co.*, No. 02-10105-BC, 2004 WL 1765519, at *2 (E.D. Mich. July 30, 2004) (noting that new evidence can be good cause for extension); 3 James Wm. Moore et al., *Moore's*

Federal Practice § 16.14.[1][b] (3d ed. 2003). Good cause therefore exists under Rule 16 to allow amendment after the deadline.

CSX's proposed amendment also satisfies the requirements of Rule 15. It is well settled that "in the absence of any apparent or declared reason – such as undue delay, . . . undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – the leave sought should, as the rules require, be 'freely given.'" *Foman v. Davis*, 371 U.S 178, 182 (1962). Although Williams claims that CSX's proposed amendment should be denied for undue delay, undue prejudice, and futility, none of its arguments are persuasive.

Williams first makes a conclusory argument that CSX's proposed amendment is "untimely," and that CSX "could have included" it in its original Answer but did not. (Pl.'s Resp. at 2.) However, as discussed *supra*, CSX did not include the new defense in its original Answer due to *Williams's* eight-month delay in fully responding to CSX's discovery requests. Thus, Williams's claim of undue delay is unavailing.

Williams also cursorily argues that he will be prejudiced by the amendment because it will necessitate additional discovery, noting that he has already been deposed and has disclosed the opinions of his two expert witnesses. (*Id.*) However, the Seventh Circuit frowns on such conclusory claims of prejudice, *see Dubicz v. Commonwealth Edison Co.*, ___ F.3d. ___, Nos. 03-3057 & 03-3384, 2004 WL 1714891, at *5 (7th Cir. August 2, 2004), and it is hard to see the prejudice that Williams alleges. He does not explain how his expert witnesses' testimony is at all related to the statute of limitations,[1] nor does he explain what additional discovery will be

[1]CSX avers that one of Williams's experts is "a liability expert, not a medical expert, and nothing he says pertains to the statute of limitations issue," and that the other expert is a doctor who never saw Williams before 2004 and thus has no relevant testimony to give regarding the statute of limitations. (Reply at 6.)

necessary. (*See* Pl.'s Resp. at 2.) More importantly, any prejudice to Williams cannot be characterized as "undue," *Foman*, 371 U.S. at 182, because the belatedness of CSX's amendment is *Williams's fault*. Had Williams complied with his discovery obligations and provided his full medical records to CSX when required, CSX would have had the opportunity to amend its Answer before the deadline. Instead, Williams was recalcitrant. He cannot now claim to be prejudiced by a delay of his own making.

Williams finally argues that CSX's proposed amendment is futile. His first official diagnosis of carpal tunnel syndrome was on September 17, 2002, only a year before he filed his complaint on September 15, 2003, and he therefore concludes that FELA's three-year statute of limitations cannot possibly bar his claim. (Pl.'s Resp. at 2-5.) However, a FELA claim does not necessarily accrue only when the plaintiff's condition is formally diagnosed. *Ricard v. Elgin, Joliet & Eastern Railway Co.*, 750 F. Supp. 372, 374 (N.D. Ind. 1990). Rather, it accrues when "a reasonable person knows or in the exercise of reasonable diligence should have known of both the injury and its governing cause." *Tolston v. Nat'l R.R. Passenger Corp.*, 102 F.3d 863, 865 (7th Cir. 1996); *Fries v. Chicago & Northwestern Transp. Co.*, 909 F.2d 1092, 1095 (7th Cir. 1990). Here, the notes of Williams's doctor indicate as follows:

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(Reply at 2.) These records suggest that, in 1997 and 1998, Williams might have known (or should have known) of the injury upon which his suit is premised; numbness and pain in the hands are the primary symptoms of carpal tunnel syndrome. *The American Medical Association*

Encyclopedia of Medicine 238-39 (1989). The records also suggest that Williams might have known (or should have known) the cause of his injury in 1998, namely that his hand and arm pain were related to his work as a railroad conductor. Accordingly, a reasonable factfinder could infer that Williams knew or should have known of "both the injury and its governing cause" by 1998, *Tolston*, 102 F.3d at 865, and thus that the statute of limitations ran in 2001, well before Williams's September 15, 2003, complaint. Williams's claim that CSX's amendment is futile therefore fails.

In sum, CSX's proposed amendment is not the result of undue delay, does not cause undue prejudice, and is not futile; therefore, leave to amend must be "freely given" under Rule 15. *Foman*, 371 U.S. at 182.

V. CONCLUSION

Because CSX has shown good cause under Rule 16 for belatedly amending its Answer and has demonstrated the propriety of its proposed amendment under Rule 15, its motion for leave to amend is hereby GRANTED. The Clerk is directed to show the proposed amended

answer filed. (Docket # 17, Ex. 1.)

Enter for this 17th day of August, 2004.

/S/ Roger B. Cosbey
Roger B. Cosbey,
United States Magistrate Judge

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